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ATTORNEY GENERAL OPINION NO. 90- 58

Mark A. Burghart
General Counsel
Kansas Department of Revenue
Docking State Office Building
915 S.W. Harrison Street
Topeka, Kansas 66612-1588

Re: Automobiles and Other Vehicles--Licensure of
Vehicle Sales and Manufacture--Definitions; Brokers

Synopsis: Credit unions which provide vehicle pricing and
referral services to their members in return for
potential business opportunities and good will
alone are not brokers as that term is defined by
K.S.A. 1989 Supp. 8-2401 (ff) prior to the 1990
amendment which becomes effective January 1, 1991.
Cited herein: K.S.A. 1989 Supp. 8-2401; 1990
Senate Bill No. 486.

* * *

Dear Mr. Burghart:

You request our opinion regarding certain services provided by
credit unions to their members, and whether rendering such
services brings credit unions within the definition of a
broker under the vehicle dealers and manufacturers licensing
act, K.S.A. 8-2401 et seq. You state that certain
credit unions assist their members in the acquisition of new
motor vehicles in one of two ways:

"Scenario No. 1

A broker contacts a credit union to determine whether the credit union would like credit union members to have the option to use the broker's services. The credit union agrees to refer members to the broker. The credit union notifies credit union members about the broker's services. When a member inquires about the broker's services, the credit union gives the member the name, address and telephone number of the broker. The credit union member calls or visits the broker to get details about the broker's services. No referral fee flows from the broker to the credit union.

"Scenario No. 2

A credit union establishes a 'working relationship' with individual vehicle dealerships. The purpose is to provide credit union members with the name of a dealer where the member can negotiate the purchase price of the vehicle without credit union involvement."

K.S.A. 1989 Supp. 8-2401(ff) defines broker as

"[A]ny person who, for commission, money or other thing of value, is engaged in the business of: (1) Selling or buying vehicles or mobile homes for other persons as an agent, middleman or negotiator; or (2) bringing buyers and sellers of vehicles or mobile homes together, but such term shall not include any person engaged in a business in which the acts described in this subsection are only incidentally performed."

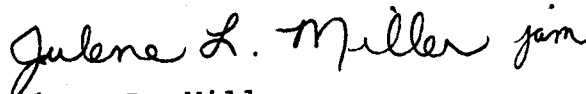
We are told that no referral fee or commission flows from the broker or the individual vehicle dealerships to the credit union. Credit unions may attract new members by offering the services described above, and hope to generate more loan activity by fostering a trusting relationship with members who use the services. See Minutes of the House Committee on Transportation, March 12, 1990, attachment 1, p. 3 of Autofacts brochure. Arguably this is a "thing of value" to the credit union. However, we believe the phrase "thing of value" as used in K.S.A. 1989 Supp. 8-2401(ff) is meant to include tangible items of value rather than potential business opportunities such as those mentioned above.

By contrast, 1990 Senate Bill No. 486, at section 1 (ff), expands the definition of broker to include "any person who, for a fee, commission, money, other thing of value, valuable consideration or benefit. . ." (emphasis added). This new language, which takes effect January 1, 1990, would appear to bring entities which derive good will or potential business opportunities from offering the described services into the definition. Testimony before the legislative committees considering the bill indicate proponents' intent to bring pricing and referral programs such as the credit unions provide into the new definition. See Minutes of the Senate Committee on Transportation and Utilities, Jan. 25, 1990, attachments 1, 4. See also 1990 Senate Bill No. 486, sections 3(q), (s), (v); State v. Dubish, 234 Kan. 708, 713 (1984) (in determining legislative intent for purposes of statutory construction, historical background and changes made in statute are to be considered by court; any changes and additions made in existing language raises presumption that change in meaning and effect was intended). Thus, it is our opinion that credit unions which provide pricing and referral services in return for potential business opportunities and good will alone are not brokers as defined by K.S.A. 1989 Supp. 8-2401(ff) because they receive no "commission, money or other thing of value" for providing the service.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General